



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1997

Ms. Marva M. Gay
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR97-2585

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110287.

The Director of Purchasing for Harris County (the "county"), which you represent, received a request for the pricing sections of the bidders' proposals for job No. 95/0584, also known as the Mobile Computing System. The bidding process is now closed and an award made and the final contract signed in the matter. You state that the county has released some of the requested information to the requestor; however, you claim that the information marked as confidential by the bidders contained in Exhibit B, the pricing information, is excepted from disclosure under section 552.110 of the Government Code.

Pursuant to section 552.305 of the Government Code, this office informed the bidders, Software Corporation of America, Inc., GTE Mobilnet, and Houston Cellular, whose information is requested, of the request and of their obligation to submit to this office their arguments as to why any claimed exceptions to disclosure apply to the instant information. Houston Cellular replied, claiming that section 552.110 of the Government Code excepts its financial information from disclosure. The other bidders did not submit a response, consequently, we have no basis to conclude that these companies' information is excepted from disclosure. *See* Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 543 (1990) at 3. The financial information submitted by Software Corporation of American, Inc. and GTE must be released.¹

¹We note that you assert that the companies submitted the information marked as confidential. Information is not confidential under the Open Records Act simply because the party submitting it anticipates

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Houston Cellular only argues that its pricing information is excepted as commercial and financial information under section 552.110.

Commercial or financial information is excepted from disclosure under the second prong of section 552.110. In *Open Records Decision No. 639* (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770.

"To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure." *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert.denied*, 471 U.S. 1137 (1985)(footnotes omitted).

Initially, we note that if Houston Cellular was awarded the contract, its pricing information is not protected from disclosure as confidential commercial and financial information. We note that federal cases applying the analogous FOIA exemption to prices in awarded government contracts have denied protection for such prices, reasoning that disclosure of prices charged the government is a cost of doing business with the government. *See generally*, Freedom of Information Act Guide & Privacy Act Overview (1995) 151-152. Moreover, we believe the public has a strong interest in the release of prices in government contract awards. *See Open Records Decision No. 494* (1988) (requiring balancing of public interest in disclosure with competitive injury to company). Consequently, the county may not withhold the information from public disclosure based on the commercial or financial information prong of section 552.110 of the Government Code if the county awarded the contract to Houston Cellular. *See Open Records Decision No. 319* (1982) (pricing proposals may only be withheld under the predecessor to section 552.110 during the bid submission process).

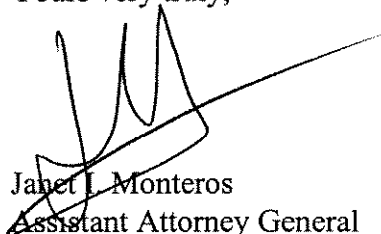
If Houston Cellular was not awarded the contract, we conclude that Houston Cellular has shown that release of its pricing information, which we have marked, will cause it to

or requests that it be kept confidential. *Open Records Decision No. 479* (1987). Furthermore, information is not excepted from disclosure merely because it is furnished with the expectation that access to it will be restricted. *Open Records Decision No. 180* (1977).

suffer substantial competitive harm. Thus we conclude that the commercial or financial information prong of section 552.110 excepts the pricing information from disclosure if Houston Cellular was not awarded the contract. We do not address the remaining information in Houston Cellular's proposal as it is nonresponsive to the request for the pricing sections of the bid proposals.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Janet L. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 110287

Enclosures: Marked documents

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